IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2551 OF 2005

Udayshankar Shukla ... Applicant

versus

The State of Maharashtra ... Respondent

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Mr.A.M. Saraogi, for the Applicant.

Mr.A.S. Gadkari, A.P.P., for the Respondent No.1.

Mr.Jayesh Bhatt, for the original complainant.

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CORAM : A.M.KHANWILKAR,J.

26th April 2005

P.C.:

. Heard Counsel for the parties, including Counsel for the complainant. Perused the record. The Applicant has been named as accused No.2 in the offence registered with E.O.W., G.B., C.B., C.I.D. Unit No. II vide CR.No.67/2002 punishable under sections 406, 420, 120-B of the Indian Penal Code, read with sections 3, 4, 5 and

6 of the Maharashtra Flat Ownership Act.

. In the first place, investigation of the case is in progress. Prima facie, there is material to indicate the complicity of the Applicant in the commission of the offence. However, according to the Applicant, the offence as registered could not have been filed as the subject matter was in issue before the M.P.I.D.A.Court for offence punishable under the Maharashtra Protection of Depositors (Financial Establishments) Act, 1999. It was contended that in such a case, no offence could be registered except that to be tried before the Designated Court by virtue of section 6 read with section 7 of the Act.

. This submission clearly overlooks that section 6 of the MPID Act is a provision to vest power in the Designated Court to try offences under the said Act. In the present case, however, the complaint pertains to offences under the ordinary law, namely, the Indian Penal Code, and the provisions of the Maharashtra Flat Ownership Act. If it is so, there is nothing in

the MPID Act precluding registration, investigation and trial of such offences under the ordinary law during the pendency of criminal action in respect of offence under MPID Act. Reliance was placed on section 7 of the MPID Act by Mr. Saraogi. However, in my opinion, the submission is ill-advised. Section 7 of the Act is a provision which invests powers in the Designated Court regarding attachment of properties, which are subject matter of the trial before it. Once again, this has nothing to do with the offences punishable under the ordinary law as is registered against the Applicant, along with other accused named in the F.I.R.

. The next argument of Mr. Saraogi is that the Applicant has been falsely implicated out of ulterior motive. In fact, the offence pertains to year 1990, when the Applicant was in no way connected with the development of the property. The principal accused, Dr. Mohan Prasad, had interacted with the proposed purchasers and the Applicant had no concern at the relevant time. Whereas, the Applicant appeared on the scene only in the year 1999 after power of attorney was

executed in his favour by one Rajiv Kumar, one of the partners of M/s. Harishree Enterprises authorising the Applicant to deal with the said property. According to the Applicant, till registration of the F.I.R. in the year 2002, no reference is made to the involvement of the Applicant in the application, which was filed by the very complainant in the MPIDA Court which came to be disposed of by a speaking order dated 5th October 2001. According to the Applicant, the complainant has carried the matter in appeal before this Court and even in that appeal, no reference is made to the Applicant or about his involvement in any of the activities of the concerned firm or for and on behalf of the principal accused, Dr. Mohan Prasad.

. The argument clearly overlooks the fact that the proceedings before the MPIDA Court were limited to the order of attachment passed by the MPIDA Court in respect of the properties of the complainant and similarly placed persons. For the nature of issue that was raised before the MPIDA Court, it was unnecessary to elaborate on how the complainant and similarly placed persons

were deceived or required to part with substantial amount. In the circumstances, the fact that no reference is made to the Applicant in the application preferred by the complainant before the MPIDA Court, or, for that matter, in the appeal preferred before this Court, is of no avail to the Applicant.

. In the circumstances, we will have to go by the plain complaint filed by the complainant alleging involvement of the Applicant, as may be discerned from para 2 of the remand application submitted by the investigating officer before the concerned Court, indicating the involvement of the Applicant in the commission of the offence. As mentioned earlier, investigation is still in progress. As at present, there is evidence to show that the Applicant was responsible for acquiring Flat No. 601 in the Society property by agreement in the name of his wife, Malti Udayshankar Shukla. That agreement is executed on 1st January 2001. There is also document on record to indicate that the Applicant had executed an agreement dated 13th September 1999 as power of attorney in respect of the disputed

property. Besides, the principal accused, Dr.Mohan Prasad, issued cheques in favour of the Applicant in the sum of Rs.5,48,000/- from the accounts of the Society and which cheques have been encashed by the Applicant. Moreover, there is material on record to indicate that the witnesses are not coming forward to depose against the Applicant, because of his activities in the vicinity and out of fear. As investigation is in progress and is at a crucial stage, releasing the Applicant on bail would hamper the fair investigation of the case as it is apprehended by the prosecution that the Applicant is likely to influence the witnesses, who are going to depose against him.

. Taking overall view of the matter, it is not a case for grant of bail. Hence, I see no reason to depart from the conclusion reached by the lower Court in rejecting the prayer for bail made by the present Applicant. Accordingly, this application is dismissed.

(A.M.KHANWILKAR,J.)